

CALIFORNIA COASTAL COMMISSION

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W11a

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Staff: DSL/CKC-SC
Staff Report: 01/27/2005
Hearing Date: 02/16/2005

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO.: A-3-MCO-04-054-R – Sunridge Views Subdivision

APPLICANT: Mr. Steve Bradshaw

AGENT: Mr. John Bridges, Law Firm of Fenton and Keller

APPELLANTS: Mary Aken, Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; Gary Patton, Executive Director, LandWatch, Monterey County; and Commissioners Sara Wan and Mike Reilly

PROJECT DESCRIPTION: Request for the reconsideration of the denial of a Coastal Development Permit for the subdivision of a 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres, 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks, demolition of an existing mobile home, barn, and greenhouse and conversion of an existing mobile home to a senior citizens unit.

PROJECT LOCATION: 250 Maher Road (south of Tarpey Road), North Monterey County (APN 127-252-009).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission deny the request for reconsideration because no error of fact or law has been identified that has the potential to alter the Commission's decision.

SUBSTANTIVE FILE DOCUMENTS: Monterey County Certified Local Coastal Program, Permit File A-3-MCO-04-054, and Reconsideration Request dated December 23, 2004.

PROCEDURAL NOTE: The Commission's regulations provide that at any time within thirty days following a final Commission action on a permit, the applicant may ask the Commission to reconsider all or a portion of their action. (CCR, Title 14, Section 13109.2) The grounds for reconsideration are provide in Coastal Act Section 30627, that states in part; **" The basis of the request for reconsideration shall be either that there is relevant new information which, in**



**California Coastal Commission
February 2005 Meeting in Monterey**

Staff: D. Landry/K. Cuffe Approved by:

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Reconsideration stfrpt 1.27.05.doc

the exercise of due diligence could not have been presented at the hearing on the matter, or that an error of fact or law occurred which has the potential of altering the initial decision” (Public Resources Code, Section 30627 (b) (3))

EFFECT OF GRANTING RECONSIDERATION: If the Commission grants the request for reconsideration, a de novo hearing will be scheduled for a subsequent Commission meeting.

EFFECT OF NOT GRANTING RECONSIDERATION: If the Commission does not grant the request for reconsideration, the December 9, 2004 Commission action to deny the project stands.

APPLICANT’S CONTENTIONS

In his reconsideration request dated December 23, 2004 and received in the Santa Cruz office on December 27, 2004, the applicant’s representative contends that errors of fact and law occurred at the December 2004 Commission hearing on the Sunridge Views Subdivision project (A-3-MCO-04-054). According to the applicant’s representative, correction of these errors has the potential to alter the Commission’s decision to deny the project. The applicant is not asserting that there is new relevant information regarding the project that could not have been presented at the December hearing. This recommendation will thus focus on whether there were “errors of fact or law” as identified by the applicant’s representative and, if so, would the error(s) have the potential to alter the Coastal Commission’s December decision.

The Applicant’s individual contentions are summarized below. Each of these contentions is discussed in detail in the Findings (pages 5 through 14 of the Findings and Declarations, below). Please see also Exhibit 1, Applicant’s letter requesting reconsideration.

Alleged Errors of Fact:

1. The Commission’s decision was based, in part, on erroneous belief that single family homes developed on existing lots of record counted toward the 50% first phase of development threshold specified in North County LUP policy 2.5.3.A.2. – and new lots created by the subdivision would somehow prejudice the existing lots.
2. Notwithstanding the December 3, 2004, clarifying letter from Todd Engineers regarding the calculation for future potential nitrates (which clearly stated the accurate methodology would predict no potential nitrate problem until the year 2242), the staff continued to represent that a nitrate problem could arise in the new well as early as 2055.

Alleged Errors of Law:

3. Staff advised the Commission that the Commission had the unilateral discretion to reduce the 50% first phase threshold in accordance with North County LUP Policy

2.5.3.A.2....such a change in the LUP would require the processing of an LUP amendment.

4. Staff represented and the Commission assumed that existing water use on the property (agricultural irrigation) was somehow less “permanent” than residential use would be....the Commission has no regulatory jurisdiction over the current water use and therefore cannot legally determine it to be any less “permanent” than residential use would be.

MOTION

MOTION: I move that the Commission grant reconsideration of Coastal Development Permit A-3-SLO-98-087.

STAFF RECOMMENDATION: Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY RECONSIDERATION: The Commission hereby denies the request for reconsideration of the Commission’s decision on Coastal Development Permit A-3-MCO-04-054 on the grounds that there is no relevant new information which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has any error of fact or law occurred which has the potential to alter the Commissions’ initial decision.

FINDINGS AND DECLARATIONS

1. Permit History and Background

Monterey County’s action to approve the Sunridge Views subdivision in North Monterey County was appealed to the Commission by Commissioners Wan and Reilly; Mary Aken, of the Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; and Gary Patton, Executive Director, LandWatch, Monterey County. The basis for the appeals was that the project as approved by the County was inconsistent with policies of the certified Local Coastal Program (LCP) relevant to the protection of groundwater resources, provision of an adequate long-term water supply, inadequate water quality due to nitrate contamination, potential impacts to Environmentally Sensitive Habitat Areas (ESHA), impacts to visual resources, conflicts with residential zoning density requirements, and procedural errors. After public hearing on September 8, 2004, the Coastal Commission found that the project did raise a substantial issue with respect to LCP policies requiring protection of ground water

resources, water quality and environmentally sensitive habitat areas, and took over jurisdiction of the coastal development permit application for the project.

A de novo staff report was released on November 23, 2004, recommending that the Commission deny the project (see Exhibit 2 for *De Novo* Staff Report). The *de novo* hearing on the project was held on December 9, 2004, as which time the Commission heard a staff presentation describing the project and the staff recommendation and testimony from the applicant, his representative and Mr. William Yates, representing appellant Friends, Artists and Neighbors (FANS) of Elkhorn Slough.

The Commission then considered the project and denied it because the project did not have an available long-term water supply as required by the LCP, due to the severe overdraft situation in North Monterey County and, thus, did not comply with certified LCP policies and ordinances relevant to protecting groundwater resources and ensuring that new development had adequate services. (Findings for A-3-MCO-04-054, adopted December 9, 2004)

On December 27, 2004, the Commission received a timely request for reconsideration of the Commission's action on the Coastal Development Permit for the subdivision from the applicant's representative, Mr. John Bridges, dated December 23, 2004.

Staff advised the Applicant that the reconsideration request regarding the Coastal Development Permit would be scheduled for the February 2005 Commission hearing in Monterey County.

2. Request for Reconsideration

The Commission's Regulations provide that at any time within 30 days of the Commission's action on a permit, the Applicant may ask the Commission to reconsider all or a portion of its' action. (CCR Title 14, Section 13109.2) In order to file a request for reconsideration, the Applicant must submit a fee as required by CCR Title 14, Sections 13055(a)(11) or (12) and the public noticing materials described in Section 13109.5(a). The grounds for reconsideration are provided in Coastal Act Section 30627 which states in part: *"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence, could not have been presented at the hearing on the matter or that an error of fact or law occurred which has the potential of altering the initial decision."*

In this case, the Applicant is asserting only errors of fact or law occurred. Therefore, the Commission must determine whether any legal or factual errors were made and if so, would knowledge of the true fact or legal point have altered its' action on this item. If the Commission determines that grounds for reconsideration exist, the request should be approved and a new hearing on whether to approve a coastal development permit for the project will be scheduled for a subsequent Commission meeting. If the Commission determines that grounds for reconsideration of the December 2004 action do not exist, the initial decision to deny the project stands.

The applicant has offered a number of reasons why he believes the Commission should reconsider its' action to deny the permit for the Sunridge Views subdivision. Each of these contentions is discussed in the following sections of these findings.

Applicant's First Contention: Alleges error of fact regarding 50% first phase development threshold.

"The Commission's decision was based, in part, on erroneous belief that single family homes developed on existing lots of record counted toward the 50% first phase of development threshold specified in North County LUP policy 2.5.3.A.2. As a result, the Commission expressed concern that the new lots created by the subdivision would somehow prejudice the existing lots. CIP section 20.144.140.B.3.a makes it clear that the 50% first phase calculation is, "exclusive of one single family dwelling on a vacant lot of record." In other words, new homes on existing legal lots are not counted toward the threshold. Staff's explanation of this section at footnote three of the staff report did not explain this distinction." (Excerpt from Applicant's Request for Reconsideration, 12/23/2004)

Analysis: The Applicant has misread CIP Section 20.144.140.B. 3 that states that new units on existing lots of record that were vacant at the time the LCP was certified would be counted in the 50% first phase build out. The particular section of the ordinance, cited in its entirety below, is perhaps a little difficult to follow, but clearly provides that new development on each of the 405 vacant lots of record will be included in the first phase of build out.

Section 20.144.140.B.3: Build-out

*In the North County Land Use Plan area; a total of **2,043** new lots or units may be created after certification of the LUP in June, 1982. This figure represents development at a level of **50%** of the build-out remaining at the time of LUP certification. It was calculated by subtracting the number of existing units from the potential build-out (i.e. 7,835 units - 3,750 units = 4,085 units; 4,085 units x 50% = 2,043 units), at the time of LUP certification as provided in LUP Policy 4.3.3. The 50% build-out is permitted as the first phase of new development which limits groundwater use to the safe yield level. Additional development **beyond** this first phase shall require a Local Coastal Program amendment, pursuant to Appendix 13 of this ordinance, and shall only be permitted after safe yields of groundwater use have been established and water supplies are determined to be available, according to definitive water studies. Between the time of LUP certification (June, 1982) and Coastal Implementation Plan preparation (July, 1987), a total of 168 lots were approved and a total of 119 final building permits were issued. **As well, there were a total of 405 vacant residential parcels** as of July, 1987. (These figures were calculated through use of NC-86 County Planning Department and Assessor computer records.) **Subtracting these figures from the 2,043 new lots or units provides the remaining build-out that may be permitted after County assumption of coastal development permitting authority,***

*exclusive of one single dwelling on a family vacant lot of record. That **remaining** build-out figure is **1,351** new lots or units. This figure shall include senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through subdivision approved after County assumption of permitting authority, but shall exclude development of a single-family dwelling on a vacant lot of record. (Ref. Policy 2.5.3.A.2& 4.3.3) (Emphasis added.)*

New units on lots of record that existed at the time of certification of the Implementation Plan in 1987 are thus correctly counted as part of the overall figure of 2043 units potentially allowed in the first phase of build out. Section 20.144.140.B.3 explains the mathematics as follows:

- Total build out of the planning area is **7834** units
- In 1987, the time of certification, **3750** units already exist in the planning area
- There is a potential for a maximum of **4085** new units in the planning area (**7834** units minus **3750** existing units equals **4085** new units)
- First phase build out is **50%** of potential maximum new units.
- **50%** of **4085** is **2043** new units, therefore a maximum of 2043 new units may be constructed in the first phase of build out of the planning area
- The **2043** maximum first phase build out units are allocated as follows: one unit on each of the **168** lots approved between 1982 (LCP Land Use Plan certification) and 1987 (LCP Implementation Plan certification), one unit for each of the **119** final building permits approved between 1982 and 1987, one unit on each of the **405 vacant lots of record** existing at the time of certification of the Implementation Plan in 1987 (for a total of **692 pre-certification units**) and **1351 new, post certification** units. (**168 + 119 + 405 + 1351 = 2043** units)

In conclusion, the staff report correctly stated that new units on lots of record that were vacant at the time of certification in 1987 were included in the first phase build out of 2043 and thus there was no error of fact regarding this assertion.

Applicant's Second Contention: Alleges error of fact regarding potential for future nitrate contamination of water supply.

"Notwithstanding the December 3, 2004, clarifying letter from Todd Engineers regarding the calculation for future potential nitrates (which clearly stated that the accurate methodology would predict no potential nitrate problem until the year 2242), the staff continued to represent that a nitrate problem could arise in the new well as early as 2055." (Excerpt from Applicants Request for Reconsideration, 12/23/2004)

Analysis: The Applicant has mischaracterized the information presented to the Commission with regards to potential nitrate contamination. Information used in the staff report regarding nitrate potential was taken from that provided by the Applicant's consulting engineers (Todd Engineering) as part of the Draft EIR (DEIR) prepared for the project (dated December 8, 2003), and supplemental information (an email from Alana Knaster dated July 12, 2004 regarding discussions she had with Todd Engineering with respect to the nitrate analysis). The DEIR *Appendix H: Hydrologic Assessment* included the Technical Memorandum – Hydrologic Assessment for the Rancho Sunridge Views EIR, dated December 19, 2002, and the Technical Memorandum – Addendum – Nitrates Concentrations in Groundwater for the Rancho Sunridge Views EIR, North Monterey County, (Technical Addendum) Dated July 21, 2003.

As described in the staff report presented to the Commission:

...The Technical Addendum concludes that the 2055 date was based on only three sample analyses and an average nitrate increase for the entire Maher Road area. However, local groundwater nitrate increases are more variable (with four properties north of the site already exceeding the 45 mg/l level, and one property south of the site not predicted to exceed the level until 2030). While the Technical Addendum notes that shallow groundwater is already contaminated with nitrates (i.e., wells drawing from depths <100 feet exceed the 45 mg/l nitrate level), some wells with deep screens (>300 feet) are already over the safe drinking water levels or will be within the next few years, and note that nitrate concentrations in deeper wells are increasing overall.

Additional information recently submitted by the project proponents (email from Alana Knaster to John Bridges, dated July 12, 2004 regarding Todd Engineering nitrate analysis) indicates that an additional regression analysis was conducted to look at "depth of perforation" versus average "linear rate of nitrate increase," which found that the new well at the site, drilled to a depth of 300 feet, might not experience nitrates in excess of 45 mg/l until the year 2240.

The staff report further notes that...

The actual Hydrologic Assessment Technical Addendum, dated July 21, 2003 (excerpts of which are included in Exhibit 9), states that both the simple difference calculation and regression analyses were calculated, with summary diagrams plotted, and that

"...both plots show a positive relationship between time and depth of well perforations. In other words new wells are being drilled deeper to avoid nitrate. In addition, the simple difference equation indicates that by 2242 the MCL will be exceeded for all wells with perforations at 300 feet. For regression analysis this date is projected to be 3174. The very large variation in time is due to low R^2 values."

Thus the information presented to the Commission in the staff report included both the dates 2055 and 2242, as described in the Technical Memorandum prepared by Todd Engineering. The staff report also included the following information:

The Hydrologic Assessment Technical Addendum conclusions note that a regression analysis could not be obtained for the subject site because the nitrate concentrations for the three analyses conducted since the new well was drilled were below the method of detection limits. The conclusions further state that

“the extremely variable nitrate concentrations over time, and correspondingly low R^2 values of the linear regression suggest that nitrate is leaching to the groundwater in varying amounts over time. Therefore, individual well monitoring for nitrate is more important than an average yearly nitrate increase for predicting when groundwater nitrate will exceed the 45 mg/l safe drinking water standards.”

The Hydrologic Assessment Technical Addendum thus concluded that:

- (1) ...Groundwater from the new well should not exceed the nitrate MCL [maximum concentration level] until 2055. However this date is based on only three sample analyses and an average nitrate increase for the entire Maher Road Area...local groundwater nitrate increases are more variable, e.g., groundwater underlying four properties just north of 250 Maher Road have already exceeded the 45 mg/l nitrate MCL but the well to the south (at 247 Maher Road), nitrate concentrations are predicted not to exceed the MCO until 2030.*
- (2) Shallow groundwater already is contaminated with nitrate; wells with shallow screens (<100 feet) are above the 45 mg/l MCL*
- (3) Some wells with deep screen (>300 feet) are already above the MCL or will be above the MCL within the next few years*
- (4) Nitrate concentrations in deeper wells are increasing overall*
- (5) Nitrate leaching rates vary with time and location (geology, land use, topography, etc)*

As described in the Applicants' reconsideration request, Todd Engineers prepared a letter dated December 3, 2004, further describing their method of analysis for determining potential nitrate contamination at the proposed Sunridge Views Subdivision site. The December 3, 2004 Todd Engineers letter was included in the Deputy Director's Report that was given to each Commissioner prior to the December 9, 2004 hearing. Relevant excerpts from that letter (which is included in its entirety as Exhibit 3) include the following:

“[The Todd Engineering] analysis of the [Monterey County Health Department] data set consisted of two statistical methods. The first was a simple difference calculation in which the earliest year nitrate concentration was subtracted from the latest year concentration and the difference was divided by the number of years between the two...The second was a regression method analysis... in which the nitrate data were plotted for that year versus nitrate concentration in mg/l for each Maher Road property in which both historical and current nitrate analytical data were available... We consider that the regression analytical method is the more accurate of the two methods.

Because the new deeper well on the Maher Road property had only three nitrate analyses (all were at or below method detection limits), the simple difference method predicted that the MCL would be exceeded in 2055. This, however, is not a useful predictive tool. A three data point limit (for the years 2000, 2001, and 2003) precluded the use of regression analysis because the regression plot would have been a flat line. Therefore, for the most accurate prediction, we used all of the Maher Road nitrate data from the simple difference calculation and regression analysis in a summary regression plot... to predict when the 45 mg/L MCL would be exceeded in wells in which the perforations were at the 300 feet below surface grade (bsg). The new well at 250 Maher Road has perforations at 340 feet bsg...

Based on our analysis of the current available nitrate data we concluded that:

- (1) The simple difference method is not accurate in predicting when nitrate MCLs will be exceeded in the new 250 Maher Road well nor could the regression method be used because of the limited data set of three years with no variation in nitrate concentrations.*
- (2) The summary regression analysis of the simple difference method with wells having perforations beginning at 300 feet bsg is the more accurate of the data analysis given the data available at this time. This method predicts no potential nitrate problem until the year 2242...*

Thus information presented by the staff to the Commission at its December 2004 hearing with regards to potential nitrate contamination included both dates 2055 and 2242 and the basis for these predictions. The power point presentation given at the hearing included a slide that stated: “Nitrate levels in new well may exceed safe drinking water limits somewhere between the years 2055 and 2242.” Staff’s oral presentation stated “Predictions on the amount of time before nitrate levels in the new well exceed safe drinking water standards vary from 2055, which is within the economic lifespan of the project, and 2242, indicating that there is great variability in predicted exceedence rates,” and staff went on to say that “We are thus recommending denial because of the significant uncertainty regarding the project’s ability to provide safe drinking water over the life of the project.

Thus there was no error of fact because the information referenced by the Applicant (the Todd Engineers December 3rd letter) was presented to the Commission. The different predictions for when potential drinking water may exceed safe drinking water levels due to nitrate contamination are based on two different statistical methods of analysis, given the constraints of available data as described in the Todd Engineers letter. All potential exceedence dates calculated by Todd Engineering were given as estimates, and were similarly presented to the Commission as estimates, and not factual times at which nitrate contamination would certainly occur.

Furthermore there was another reason for denial based on the protection of groundwater and agricultural resources, so even without a finding on potential nitrate contamination the project would have been denied.

Applicant's Third Contention: Alleges error of law regarding the ability of the Commission to reduce the 50% first phase development threshold.

"Staff advised the Commission that they (the Commission) had the unilateral discretion to reduce the 50% first phase threshold in accordance with North County LUP Policy 2.5.3.A.2. Said policy states that the 50% threshold "may be further reduced by the County if such reductions appear necessary..." Moreover, such a change in the LUP would require the processing of an LUP amendment." (Excerpt from Applicant's Request for Reconsideration, 12/23/2004)

Analysis: The Applicants' assertion that only the County can implement Policy 2.5.3.A.2 is incorrect because such an interpretation would impermissibly limit the Commission's appeal authority provided by statute. When the Commission takes jurisdiction over a Coastal Development Permit on appeal, as is the case here, the Commission "stands in the shoes" of the County regarding enforcement of LCP Policies and Ordinances and thus is required to review the project for consistency with *all* applicable LCP standards. This project was subject to a valid appeal to the Commission as provided by Section 30603 (a) (4) of the Coastal Act. The Commission, after a public hearing, found that the CDP approved by the County raised a substantial issue regarding consistency with the certified LCP and took jurisdiction over the project. A de novo review of the proposal was heard using the Policies and Ordinances of the LCP as the standard of review pursuant to the authority found in Section 30604(b) of the Coastal Act. This statutory authority to employ the Policies and Ordinances of the certified LCP does not limit the Commission to only certain policies as suggested by the Applicant but rather simply states that "the LCP shall be the standard of review". As an appellate body, the Commission must be allowed to interpret and implement the LCP on an equal footing with the County. The fact that a particular policy states that "the *county* shall..." does not preclude the Commission from invoking the policy as part of their appellate review. To imply, as does the Applicant, that the interpretation and enforcement of certain LCP standards is the exclusive purview of the county defeats the intent of the statute that establishes the standard of review for appeals. The Commission was, therefore, entitled to reduce the build out percentage below 50% as provided by

LUP Policy 2.5.3.A.2 based on the new information in the findings that such a reduction was warranted.

The Applicant also asserts that a **reduction** in the 50% first phase build out under Section 20.144.140 B.3 requires an amendment to the LCP in order to be effective. Again, the Applicant, in paraphrasing this policy has omitted key portions of the policy *and* the ordinance that address this issue and that clearly state that an LCP amendment is required only for additional development **above** the 50% figure. The relevant portion of the policy and ordinance is as follows:

***North County LUP Policy 2.5.3.A.2** The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build-out as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. **Additional** development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an **approved LCP amendment**. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.*

***Certified North Coast Implementation Plan, Title 20.144.140.B.3** The 50% build-out is permitted as the first phase of new development which limits groundwater use to the safe yield level. **Additional** development beyond this first phase shall **require a Local Coastal Program amendment**, pursuant to Appendix 13 of this ordinance, and shall only be permitted after safe yields of groundwater use have been established and water supplies are determined to be available, according to definitive water studies. (Emphasis added.)*

Applicant's Fourth Contention: Alleges error of law regarding permanence of agricultural versus residential water use.

"Staff represented and the Commission assumed that existing water use on the property (agricultural irrigation) was somehow less "permanent" than residential use would be. There is no legal basis for this assumption in light of the vested nature of the existing agricultural use and the correlative groundwater rights of the property owner. The Commission has no regulatory jurisdiction over the current water use and therefore cannot legally determine it to be any less "permanent" than residential use would be." (Excerpt from Applicant's Request for Reconsideration, 12/23/2004)

Analysis: The Applicant has mischaracterized the discussion in the findings regarding the difference between agricultural and residential water use as being the difference between a

permanent water supply and a non-permanent supply. The relevant portion of the findings, cited below, focus on the facts that agricultural water use on the site has varied over the years and that allocations of water for agricultural use are more flexible than that for residential uses that require a more consistent commitment of supplies.

Residential Water Use Versus Agricultural Water Use [see page 17-18 of findings]
Moreover, the LCP inconsistencies with this project cannot be overlooked simply because the proposed project is estimated to use less water per year than the current strawberry operation. The site's existing water use for 2002 is estimated to be 47.12 afy. Residential use is estimated at 2.35 afy based on a typical 0.78 afy per dwelling unit (times the three units currently on the site). Agricultural use is estimated at 44.77 afy based on 3.2 afy per acre of berry cultivation (times 14 acres in production in 2002). Due to recharge from infiltration, the estimate net draft on the aquifer is 24.05 afy (i.e., 23.08 afy of extracted water is estimated to infiltrate back into the aquifer). Future water use after Sunridge Views is built out is estimated to be 7.85 afy (0.78 afy per dwelling unit times 10 units). Due to recharge from infiltration, the estimate net draft on the aquifer is 0.05 afy (i.e., 7.8 afy of extracted water is estimated to infiltrate back into the aquifer). There is thus a reduction of 39.27 afy in estimated water use and a reduction of 24 afy in net draft on the aquifer. But, this estimated reduced water use as a result of agricultural conversion to residential use is not necessarily certain, long-term, nor the best outcome for the site for at least six reasons.

First, historic photos (shown in Exhibit 7 [of the adopted staff report]) show that agricultural use has varied over time, with regards to both the type of agricultural production, and the amount of land under cultivation, indicating that water use has not remained constant over time. They also show that strawberry cultivation on site is a relatively recent phenomenon; in the not too distant past, irrigated agriculture was not practiced in this area. An aerial photo of the site, taken in 1931, shows that the site was used for agricultural production prior to establishment of the Coastal Act, apparently for some type of orchard use. However, other aerial photos, taken in subsequent years (1956, 1971, 1980, and 1999) show that agricultural production on the property has varied over time, with orchard production ceasing some time after May 1956, and much of the site not in production in 1971. The 1980 photo shows that only about half of the existing area now under cultivation appears to have been farmed at that time, and the 1999 aerial photo shows that cultivation had expanded into the northern half of the site, similar to that currently under cultivation. Since the amount of land and crop use have changed over time, it is reasonable to conclude that water demand has likely changed over time as well. Thus, while the extent and type of agricultural use may result in a relatively high water use at the current time, the historic photos show that this has not consistently been the case. According to the project's hydrologic report, in 1999 only 9 acres of the site was in production; while according to the final EIR only 4.5 acres were in

cultivation in 1998 and 1999. Actual water use in those two years was 13 and 14 acre-feet respectively. Thus, even if the estimated net draft on the aquifer of 24 afy approximates reality, that figure is only from one period of time. The actual annual amount of water savings may be an overestimate if it is based only on the removal of strawberry production currently on site, instead of compared to the average water use that has occurred on the property over time.

Second, the estimated net reduction in water consumption is not guaranteed, in part because the estimates regarding existing and proposed water demand provided in the project's hydrologic report assume that the new SFD development will not use any water for landscaping and gardening. The project's hydrologic report estimates zero future irrigation use for landscaping. This assumption seems unreasonable. While residential use would severely restrict the potential for continued commercial use of the site, actual residential water use could be much greater than estimated if individual, future property owners irrigate their land for personal use (e.g., for landscaping and/or gardening). Future owners may also decide to build second (senior) units, which would also add to water use on site.

Third, the estimated current and future draft on the aquifer is also by no means certain. These figures are based on estimated infiltration. Only 37% of crop irrigation water is estimated to infiltrate back into the groundwater basin, while 50% of residential water use is estimated to infiltrate back into the groundwater basin. Additional infiltration is estimated from precipitation that enters into the ground. The 50% figure for residential use is based on aquifer recharge from septic systems. However, septic leach fields are shallow, and it would take many years for the leachate to reach the groundwater basin, relative to the rate at which groundwater is pumped out for daily residential use. Conversely, the use of drip irrigation for watering strawberries could result in lower evaporation rates and consequently higher than estimated infiltration rates.

Fourth, as long as the property were to stay primarily in agricultural use, water consumption could be more easily adjusted or even terminated, especially if there is ever a supply or quality problem. Water use for agriculture can vary greatly based on the type of crops grown. For example artichokes use only 1.75 afy/acre and Brussels sprouts use only 2.5 afy of water per acre of crop. Grazing may not require any irrigation. There are also initiatives underway and planned to practice more aggressive conservation measures in crop irrigation to reduce water consumption. In contrast to agricultural water use, which can be adaptively managed over time, ongoing residential use will require a commitment to a permanent long-term water supply, which could not be served with the same flexibility to adapt to changing climatic and groundwater storage conditions.

Although the Applicant characterizes this assertion as an "error of law" it is not clear what law is being violated by the above discussion or the effect of the alleged error on the outcome of the

Commission's deliberations on this project. The observation that water use for agriculture varies from that required for residential use is simply a statement of fact supported by evidence in the record. Likewise, the observation that agriculture on a site can expand, contract or simply not occur at all during any given time period whereas once a residential use is established it is in almost every case maintained from year to year at a constant rate is a reasonable statement, also supported by evidence in the findings. The discussion does not address any "vested" nature of agriculture use on the site nor does it offer any opinion on any water rights the applicant may have. In conclusion, this assertion does not provide any basis for reconsideration of the Commission's action on this CDP because it mis-states the point of the finding and, even if it accurately reflected the discussion, the project was not denied due to differences in agricultural water use and residential water use, but because the new development (the creation of new lots and anticipated future residences) could not be assured of an adequate water supply consistent with the LCP policies and ordinances.